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information or raise any new arguments whatsoever.^{1/} Instead, they simply repeat the very same arguments the Resellers and AG raised in the earlier round of comments six months ago, based on the very same information that has been available to them since the earlier proceeding before the DPUC last summer. Given the fact that the same arguments have been before the Commission for six months, the fact that those arguments have been answered in Springwich's earlier comments and reply comments, and the fact that the statutory deadline for a Commission decision is fast approaching, Springwich does not intend to burden the record or the Commission with a point-by-point refutation of each of the arguments repeated in this latest round. Instead, Springwich will simply address generally the erroneous standards which the Resellers and AG seek to have the Commission use in considering the DPUC Petition.

^{1/} Indeed, the bulk of the Reseller's filing is an un-redacted copy of the Reply Comments they filed on October 19, 1994 in this proceeding. While the Supplemental Comments imply that the un-redacted version could not have been filed until the Bureau issued the *First Confidentiality Order* on January 25, 1995 (DA 95-111), that is incorrect. Pursuant to the DPUC's Protective Order, parties to that proceeding, including Resellers, were permitted to use confidential information in filings before the Commission subject to the requirement that:

12. . . . To the extent that the Department or any Recipient seeks to use Confidential Information provided hereunder in filings before the FCC, they shall do so together with a request for confidential treatment of the Confidential Information, which request shall indicate to the FCC the existence of this [Protective] Order.

But for the fact that Springwich does not seek to further distract the Commission from its consideration of the important questions in this docket, and the fact that the un-redacted Reply Comments do not offer any arguments which the Commission will find persuasive, Springwich believes that a motion to strike the Reply Comments would be in order, given the grossly untimely nature of the filing, and the fact that, having been based on material available before their October 19, 1994 filing date, Resellers do not comply with the Commission's *First Confidentiality Order* permitting new comments on material filed by the DPUC on January 20, 1995.

DISCUSSION

Perhaps the most telling example of the erroneous underpinning the AG's and Resellers' position is the argument of the AG that, "[a]lthough evidence may support alternative conclusions," the DPUC Petition should be granted "[a]s long as there is supporting evidence for the DPUC's position." AG Supplemental Comments at 10. While the AG may be correct as to the standard to be applied by a reviewing court to an agency decision, that is not the standard to be applied by the Commission where the Congress has expressed an clear federal intent to create regulatory parity in mobile services and to enhance competition by preempting state regulation of commercial mobile services, including cellular services. Contrary to the AG's proposed standard, the Budget Act requires that a state demonstrate that (1) "market conditions with respect to [CMRS] services fail to protect subscribers adequately from unjust and unreasonable rates" and (2) continued state regulation is "necessary to ensure that such rates are just and reasonable."^{2/} The Commission has therefore correctly held that the states will need to clear "substantial hurdles" to overcome the federal "mandate for regulatory parity."^{3/} That

^{2/} 47 U.S.C. §§ 332(c)(3)(A) and 332(c)(3)(B).

^{3/} *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd. 1411, ¶ 23 (1994):

states must, consistent with the statute, clear substantial hurdles if they seek to continue or initiate rate regulation of CMRS providers. While we recognize that states have a legitimate interest in protecting the interests of telecommunications users in their jurisdictions, we also believe that competition is a strong protector of these interests and that state regulation in this context could inadvertently become as [sic] a burden to the development of this competition. Our preemption rules will help promote investment in
(continued...)

standard has not been met. Instead, as the Resellers also concede, and then ignore,^{4/} the Connecticut proceeding at best contains contradictory evidence upon which the DPUC was unable to reach any conclusions. Such inconclusive findings in no way clear the "substantial hurdle" established by Congress to justify continued rate regulation which frustrates the Congressional goal of establishing regulatory parity among existing CMRS carriers and new market entrants such as Nextel, the new A and B Block broadband PCS licensees, and others.^{5/}

A review of the Decision setting forth the DPUC's basis for seeking continued regulation indicates that the Department was unable, based on an extensive record, to make *any* evidentiary findings of anti-competitive or discriminatory conduct. Instead, the DPUC merely identified a number of areas in which the DPUC was confronted with conflicting record evidence which it

^{3/}(...continued)

the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our federal mandate for regulatory parity.

^{4/} E.g., Reseller Supplemental Comments at 2 ("Because of the disparity in the "reasonable" rate of return figures suggested by the wholesale carriers on the one hand and the resellers, on the other, the [DPUC] concluded that it should hold additional hearings to determine what a "reasonable" rate should be.").

^{5/} Since the DPUC Petition and the initial round of comments in this proceeding, Nextel has demonstrated its presence in Connecticut by its active participation in the DPUC's ongoing Area Code 203 exhaust proceeding. Also, as part of the New York and Boston MTAs, the Connecticut market learned just this week that WirelessCo (Sprint/TCI/Cox/Comcast) will be a broadband PCS licensee in Connecticut (both in the New York and Boston MTAs), and that AT&T Wireless will be a broadband PCS licensee in the Boston MTA. (In addition, another broadband PCS pioneer preference licensee, Omnipoint, will compete in the New York MTA.) Clearly, these carriers, all of whom will be well-financed, experienced industry participants, will be formidable (and unregulated) CMRS competitors.

seeks to review prior to discontinuing regulation.^{6/} The Department's Petition therefore simply seeks continued regulation to permit it to *investigate further* the Connecticut market conditions -- precisely because the DPUC has *not* concluded, and therefore has not met its burden under the Budget Act to show that market conditions in Connecticut "fail to protect subscribers adequately from unjust or unreasonable rates or rates that are unjustly or unreasonably discriminatory." 47 U.S.C. § 332(c)(3)(A).

The AG's Supplemental Comments note the comprehensive and thorough nature of the DPUC's investigation of the wholesale cellular market which led to the Decision. AG Supplemental Comments at 9. Springwich agrees that the Department's investigation was comprehensive. Given the depth and breadth of that investigation, however, it is particularly striking that all of the reseller allegations of anti-competitive behavior were found by the DPUC to be inconclusive at best. Given the high-powered microscope applied to the Connecticut marketplace and the inconclusiveness of the reseller allegations, on one hand, and the declining rates and improving service which have prevailed on the other hand, the very thoroughness of the DPUC's investigation should lead the Commission to conclude just the opposite from the result urged by the AG and Resellers -- Connecticut is a marketplace functioning efficiently and effectively. There were no findings that the rates of the carriers are unjust or unreasonable,^{7/} no

^{6/} E.g., Decision, *DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition*, DPUC Docket No. 94-03-27, at 27, 32 (Aug. 8, 1994). A copy of the Decision was appended to the DPUC's Petition filed at the FCC.

^{7/} Since the inception of cellular service, wholesale cellular prices in Connecticut have declined steadily within the range of rates permitted by the carriers' approved DPUC tariffs,
(continued...)

findings that the carriers are earning supra-competitive profits,^{8/} and the only allegations of anti-competitive conduct were admittedly "inconclusive."^{9/} Indeed, there could be no such findings since, as set forth in detail in Attachment 2 hereto, application of the Commission's eight *Second Report and Order* criteria to the Connecticut marketplace demonstrates conclusively that the market is vigorously competitive and will imminently become more so as the new PCS and ESMR licensees enter the market. *See* n. 5, *supra*.

^{7/}(...continued)

without a single increase within the permissible range. These decreases have been substantial, and have taken place both as changes to the carriers' effective rates and as promotional offerings (which promotions have often become permanent). A comprehensive list of the tariff changes, including rate decreases and promotions, which have been instituted by Springwich since it began service is appended as Attachment 1 hereto. (Attachment 1 updates the list which was contained in Exhibit 7 to Springwich's initial Comments, filed September 19, 1994.) *See also* Springwich Brief at 15-16. Retail rates in Connecticut are not regulated.

^{8/} As noted above, the DPUC did not find that the rates of return of the wholesale cellular carriers are unjust or unreasonable. One of the issues which the DPUC seeks to investigate further, however, is the seemingly disparate rates of return calculated using the audited financial statements of the carriers, on one hand, and reseller witnesses on the other. As described in Springwich's initial Brief, that "disparity" was only produced through gross manipulations of audited financial results in at least five arbitrary and self-serving ways by the resellers, including the substitution of one carrier's expenses for the other's in order to inflate the rate of return -- a tactic that, given the relative size and economies of scale of the two Connecticut carriers, is equivalent to inserting MCI's costs into AT&T's financial results in order to arrive at a supra-competitive AT&T rate of return. *See* Springwich Brief at 28-31.

^{9/} The only allegations of anti-competitive conduct emanated from two cellular resellers who have a vested interest in the continued regulation of the wholesale carriers. *See* Springwich Brief at 39-42; Springwich Reply Brief at 15-20.

CONCLUSION


The standard in the Budget Act for granting an exception from Congress' mandate for regulatory parity in CMRS regulation and preemption of intrastate rate regulation of CMRS is clear. A state must demonstrate that: (1) competitive conditions are inadequate to protect consumers; *and that* (2) continued rate regulation will provide the necessary protection. The evidence presented to the Commission, however, demonstrates that competitive market conditions in Connecticut, and not regulation, have produced just and reasonable wholesale cellular rates that have been marked by wholesale rate reductions and continuous network investment and have resulted in exploding subscriber growth.

Indeed, even after extensive hearings, the Department could not reach a contrary conclusion, nor did it determine that market conditions are inadequate in Connecticut to protect consumers against unjust or unreasonable rates or that the claims of anti-competitive conduct and discrimination alleged by a few cellular resellers were valid. The Department merely determined that further investigation of these issues was warranted.

The Commission, on the other hand, is required by Congress to weigh the evidence presented and, in order to sustain the Petition, it must determine that specific evidence exists to support the unsupported conclusions asserted by several commenters -- but not reached by the Department. Based upon the evidence presented by Springwich, the other cellular carriers, and several other commenters in this docket, the Commission must instead conclude that the evidence in fact supports just the opposite: that Connecticut is a vigorously competitive market in which competition -- and not regulation -- is providing and will continue to provide consumers with

high quality, declining cost mobile telephone service. For these reasons, the Commission must deny the Petition.

Respectfully submitted,



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Dated: March 17, 1995

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SCI/SPRINGWICH PARTNERSHIP WHOLESALE TARIFF CHANGES

<u>Effective Date</u>	<u>Type</u>	<u>Docket Number</u>	<u>Description</u>
01/16/85	Original	84-08-16	Original tariff approval
06/14/85	Tariff	none	1) Allow for temporary suspension of cellular number upon request of end-user. 2) Reduce minimum usage requirement from 150 to 100 minutes per month. 3) Text change to allow directory listings to be accepted from the end-user rather than the subscriber (reseller).
08/02/85	Effective Rates	none	Reduce monthly cellular number charge by \$7.00 for each tier.
05/23/86	Tariff & Effective Rates	86-03-12	Introduction of Attempt Charge for incomplete calls of less than one minute duration
07/01/86	Tariff	none	Revised header and text, all pages, to say SNET Cellular, Inc.
07/21/86	Tariff & Effective Rates	none	1) Reduce charge for Speed Calling from \$2.50 to \$1.25 per month. 2) Introduce three Custom Calling features: Call Waiting, Call Forwarding, and Conference Calling. 3) Introduce initial Period Charge associated with Call Waiting and Call Forwarding features.
07/06/87	Tariff	none	Revision to CSGA Map
10/13/87	Tariff	none	Revision to CSGA Map

<u>Effective Date</u>	<u>Type</u>	<u>Docket Number</u>	<u>Description</u>
03/30/88	Tariff & Effective Rates	87-10-23	1) Flexibility to offer fractional minute billing. 2) Change in minimum/maximum for basic service and range of rates for optional features. 3) Two additional rate bands for cellular numbers and usage. 4) Change in range of rates in the Attempt Charge. 5) The offering of discounts on cellular numbers and usage.
05/11/88	Promotion	none	For three months: 1) Suspend number activation or service restoral charge. 2) Reduce rates by \$6 per month. 3) Suspend "Hot Line" optional feature rate and charge.
05/15/89	Promotion	none	Promotion A: For 3 Months, 1) Suspend Service Activation Charge 2) Reduce Cellular Number Rates (band 1-6) by \$3 per month/number, for all numbers in service. Promotion B: For 7 Months, 1) Peak Period Usage Rates credited with 100 peak minutes (@ \$.33/min) for each new number that remains active 6 months. 2) Cellular Number Rates (band 1-6) reduced by \$3 per month/number, each new number activated.
06/02/89	Tariff	89-05-11	Discontinue "Speed Call" optional feature due to new type of switch installation.

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<u>Effective Date</u>	<u>Type</u>	<u>Docket Number</u>	<u>Description</u>
03/05/90	Promotion	none	For ten months (thru 12/31/90): Reseller receives \$66 credit per net activation in month activated; additional \$99 per net activation, if number still active six months later.
07/01/90	Effective Rates	none	1) A \$1.00 reduction in the cellular number rates per month per number for all categories. 2) A \$.01 reduction in the peak and off-peak usage rates per minute for all categories.
12/19/90	Tariff	90-11-10	Add Litchfield and Windham Counties (RSAs) to service area.
12/31/90	Promotion	none	For three months: Suspend Number Activation or Service Restoral charge and "Hot Line" optional feature rate and charge.
03/20/91	Tariff	91-02-12	Lower monthly minimum usage billing requirement from 100 to 75 minutes per cellular number.
04/15/91	Promotion	none	1) Suspend Number Activation or Restoral Charge for 3 months. 2) \$96 credit for each new activation spread over 3 month at \$32/mo. 3) \$96 credit per net number of activations during 6 month period (4/15-10/15) provided cellular number remains active for 6 months. 4) Suspend Hot Line Rate and Charge for period 4/15/91 - 12/31/91.

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<u>Effective Date</u>	<u>Type</u>	<u>Docket Number</u>	<u>Description</u>
10/24/91	Tariff & Effective Rates	90-01-03	Name change to Springwiche.
01/03/92	Promotion	none	Suspend Hot Line charge for period 1/3/92 - 12/31/92.
01/15/92	Effective Rates	none	Lower Peak & Off-Peak Usage rates by \$.01 per tier.
05/01/92	Promotion	none	Suspend Number Activation and Restoral Charge: 5/1/92 - 12/31/92.
07/01/92	Effective Rates	none	(1) Lower Peak & Off-Peak usage rates by \$.03 per tier. (2) Activate Length of Service Discount, maximum = 1.5%
07/01/92	Promotion	none	(1) Waive Svc. Order Change/ Feature Activation Charge, and (2) Waive all monthly Optional Feature charges: 7/1/92 - 12/31/92.
12/30/92	Tariff & Effective Rates	92-10-05	Initial Period Charge to be rated at one-half applicable usage rate.
01/04/93	Promotion	none	Suspend Hot Line Charge for period 1/4/93-12/31/93.
09/13/93	Effective Rates	none	Reduce Cellular Number Rates by \$2.00 per tier.
09/13/93	Promotion	none	For period 9/13/93-3/31/94: (1) Further reduce Cellular Number Rates by \$2.00 per tier. (2) Waive non-recurring charges.
09/15/93	Tariff	none	Eliminate the monthly minimum usage requirement.

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<u>Effective Date</u>	<u>Type</u>	<u>Docket Number</u>	<u>Description</u>
04/01/94	Promotion	none	1. Suspend Hot Line charge for period 4/1/94-3/31/95. 2. Continue promotional reduction of Cellular Number Rate by \$2.00 per tier for period 4/1/94-12/31/94.
06/27/94	Effective Rates & Promotion	none	1) Reduce Cellular Number charge rates by \$2.00 per tier (making the promotion effective 4/1/94 an effective rate change). 2) Promotion to reduce off peak usage rate to \$0.05 per minute (all tiers) for period 6/27/94- 10/31/94.
08/12/94	Tariff	94-03-27	Change advance notice period from thirty days to five days.
08/17/94	Effective Rates	none	Reduce Cellular Number charge rates by an average of 35% per tier.
11/01/94	Effective Rates	none	Reduce Cellular Number charge rates to \$10.50 across all volume tiers (reducing rates in the lowest volume tier by 22%, and an average of 12% across all tiers).
01/01/95	Effective Rates	none	Extend promotion waiving non- recurring charges through June 30, 1995.

A comparison of the competitive conditions in the Connecticut cellular market with the factors identified by the FCC's *Second Report and Order* as pertinent to its examination of a CMRS market demonstrate that market forces in Connecticut will adequately protect subscribers against unjust and unreasonable rates and rates that are unjustly or unreasonably discriminatory.

(i) **The number of CMRS providers in the state, the types of services offered by CMRS providers in the state, and the period of time that these providers have offered service in the state**

- There are multiple CMRS providers in Connecticut today.
- Springwich has been providing wholesale cellular service in Connecticut since 1985.
- The Metro Mobile companies began providing intrastate wholesale cellular services in 1987 and were acquired by Bell Atlantic in 1992.
- At the retail level, fifteen resellers offer unregulated retail cellular services to consumers in Connecticut.
- In addition to cellular services, there are over 40 companies that provide paging services in Connecticut.
- SMR services also are currently available in Connecticut and tower sites have been constructed by Nextel for its ESMR service that is expected to be available in Connecticut in 1995. (Indeed, Nextel recently confirmed its presence in Connecticut by its active participation in an ongoing DPUC proceeding regarding Area Code 203 exhaust.)

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(ii) **The number of customers of each CMRS provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each CMRS provider**

- The number of reseller customers of the wholesale cellular providers have increased from eight to fifteen since 1985.
- End user subscriber growth in Connecticut over the past five years has averaged in the double digits.
- In the last 14 months new end user subscriber growth has increased 100 percent.
- Subscriber growth has been shared among the resellers and not been limited to the retail affiliates of the wholesale providers.
- The rates of return of each of the wholesale cellular providers, when calculated from actual historic audited financial information (and based on the carriers' reasonable projections for future years) are reasonable.

(iii) **Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable**

- The rates of the wholesale cellular providers have continually decreased in Connecticut in line with cellular price decreases nationwide. In 1993 and in 1994 the price decreases have continued. (See Attachment 1.)
- The retail cellular market in Connecticut has been characterized by the introduction of new lower-priced service plans and relative stability in basic plan rates, while the networks have continued to provide additional value for the same basic plan price.

(iv) **An assessment of the extent to which services offered by the CMRS providers the state proposes to regulate are substitutable for services offered by other carriers in the state**

- Paging services currently provide a level of substitution for cellular services in Connecticut.
- The six narrowband PCS licenses recently awarded will increase and enhance the paging services already available in Connecticut.
- Connecticut also is expected to be one of the first markets for Nextel's ESMR service that will be interoperable with other services including cellular and landline services. Nextel currently has constructed tower sites in Connecticut and is expected to begin offering service in Connecticut in early 1995. (Nextel has confirmed its presence in Connecticut by actively participating in a DPUC area code docket.)
- Broadband PCS also will provide a substitutable service for cellular service.
- Connecticut is one of the primary markets for PCS due to its location between the New York and Boston metropolitan areas and its *per capita* income which is the highest in the nation.
- Broadband PCS licenses for the A and B Block New York and Boston MTAs have been awarded to WirelessCo (Sprint/TCI/Cox/Comcast) (New York and Boston), AT&T Wireless (Boston), and a pioneer preference licensee (Omnipoint).

(v) **Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry**

- New providers of CMRS will not face any barriers to entry into the Connecticut market and are likely to aggressively offer CMRS services in the state due to the attractive demographic characteristics of the market, including Connecticut's ranking as the state with the highest per capita income.
- The Department only regulates wholesale cellular service providers licensed by the FCC.

- Other mobile services, including ESMR and PCS and retail cellular are not and will not be regulated by the Department.
- The Budget Act preempts all state entry regulation of CMRS providers.

(vi) Specific allegations of fact regarding anti-competitive or discriminatory practices or behavior by CMRS providers in the state

- The wholesale cellular carriers have not engaged in anti-competitive or discriminatory practices.
- Structural separation between the wholesale and retail cellular carriers is not required by the FCC or State law. Springwisch has adopted structural separation safeguards.
- The few allegations of anti-competitive or discriminatory conduct emanate primarily from a reseller in financial distress whose credibility and veracity are in serious question.

(vii) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces will be considered especially probative

- The record does not contain any evidence of instances of systematic unjust and unreasonable rates or rates that are unjust or unreasonably discriminatory.
- The evidence demonstrates a continuing decline in wholesale cellular rates while network investment by the wholesale carriers continues to increase.
- Forecasts predict future price decreases as the product of new competition, new spectrum-based services and the conversion by the wholesale carriers to digital technology.

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- The reasonable rates of return by both carriers demonstrate that rates are reasonable and that the competition between the carriers today and the impending arrival of new competition will continue to produce reasonable rates.
- (viii) **Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information about complaints filed with the state regulatory commission.**
- The continual double digital growth of cellular penetration demonstrates the general level of customer satisfaction with cellular services.
 - The wholesale carriers are continuing to make network investments such as increasing cell density to ensure that resellers are able to retain and grow their subscribership.
 - The record does not contain any evidence of statistics or complaints from cellular end users in Connecticut. The only isolated complaints are from resellers who seek to use the regulatory process to ensure they earn a profit in a controlled regulatory market rather than face their uncertain future in a truly competitive market.

CERTIFICATE OF SERVICE

I, Latonya Y. Ruth, hereby certify that on March 17, 1995, copies of "Supplemental Reply Comments of Springwich Cellular Limited Partnership" in PR Docket No. 94-106 were sent via first class mail to the following:

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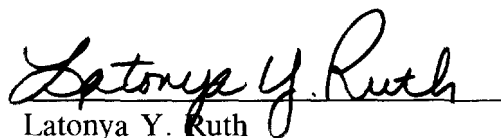
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